

2. Enter a preliminary and permanent injunction prohibiting the defendants, their agents, policemen, subordinates and/or employees from using, navigating, operating or moving the seized property until such time as otherwise provided by this Court.

3. Enter a preliminary and permanent injunction directing the defendants to deliver to plaintiff the seized property.

4. Declare Acts Number 4 of June 23, 1971 (24 L.P.R.A. § 2512 (a), (4) and (b), and Act Number 39 of June 4, 1960 (34 L.P.R.A. § 1722) of the Commonwealth of Puerto Rico unconstitutional as applied to plaintiff in the circumstances of this case, and enjoin its enforcement against the property of plaintiff.

[13] 5. Grant such other further relief as in the circumstances may be warranted.

In San Juan, Puerto Rico, this 6th day of November, 1972.

NACHMAN, FELDSTEIN,
GELPI & ANTONETTI
Attorneys for Plaintiff
P.O. Box 2407
San Juan, Puerto Rico 00903

/s/ GUSTAVO A. GELPI

[JURAT OMITTED]

[14] PEARSON YACHT LEASING COMPANY

DIVISION OF GRUMMAN ALLIED INDUSTRIES, INC.

Lease Contract No. 405

LEASE AGREEMENT, hereinafter called the "Lease", made and entered into in Garden City, Nassau County, State of New York, this 15th day of March 1971, by and between Pearson Yacht Leasing Company, Division of Grumman Allied Industries, Inc., a corporation incorporated under the laws of the State of New York, and having its principal office at 600 Old Country Road, Garden City, N. Y., hereinafter called the "Lessor", and Donovan & Loretta Olson, hereinafter called the "Lessee".

WITNESSETH:

1. Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the vessel and accessories, hereinafter "Equipment", described in Schedule "A", hereto annexed and made a part hereof, upon the terms and conditions contained in this agreement.

2. This Lease is for the term of 60 months from the date of delivery of the Equipment described in the aforementioned Schedule "A", during which term Lessee will pay Lessor as rent for the use of the Equipment in accordance with this agreement and the schedule covered by Schedule "B", hereto annexed and made a part hereof.

Payment of said rent shall commence as of the date of the Lease and shall continue on the same date each and every month thereafter for the term of this Lease. Late payments of rentals shall be charged 1½% monthly on delinquent amounts.

3. (a) Lessee shall furnish at its own cost and expense gasoline or other fuel, lubricants, grease, anti-freeze solution, and replacement parts and supplies appropriate for the use and operation of the Equipment leased hereunder,

and shall service, repair and maintain all said Equipment in good condition, but Lessee shall not be responsible for normal wear, tear and depreciation. Lessee is to have the benefit of any manufacturer's warranty as to each Equipment and all accessories thereon.

(b) Lessee shall permit Lessor to inspect any and all said Equipment upon Lessee's premises or elsewhere at any reasonable time, and cooperate fully to facilitate such inspections.

(c) Lessee shall pay any license fees, tolls, taxes levied by federal, state or municipal governments or authorities against said Equipment and also all costs of any inspection required by the state in which Lessee keeps and operates such Equipment.

4. (a) Prior to the delivery of said Equipment, Lessee shall at its own expense furnish the Lessor with insurance policies with loss payable clause to Lessor placed with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damages, loss or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount of not less than the replacement value of said Equipment.

Lessee shall also obtain and furnish Lessor public liability insurance policies with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damages or claims for personal injuries arising in any manner out of the operation or use of said Equipment. Said policy or policies to contain limits of \$200,000 to \$500,000 and against damages for claims for property damages in an amount not less than Fifty Thousand Dollars (\$50,000).

In case of failure of the Lessee to procure and maintain said insurance and pay the premiums therefor, in addition to any and all other remedies to the Lessors as contained

in this Lease, Lessor may effect such insurance, in which event the cost thereof shall be payable by the Lessee as additional rent with the next month's installment of rent.

(b) Lessee hereby assumes all liability for, and agrees to save Lessor harmless against all loss imposed by law resulting from the use or operation, during the term of the Lease hereunder, of Equipment leased hereunder and arising out of death or bodily injury to Lessee or any other or different person or persons and/or damage to property belonging to Lessee or to any other or different person or persons. Lessee agrees to defend at its own expense all claims or suits for damages for the causes hereinbefore set forth and to pay all costs hereof.

(c) The damage, destruction, loss, disability or forfeiture of said Equipment shall not discharge or diminish the [15] obligation of Lessee to pay rent as provided in this agreement, except as may be otherwise mentioned herein.

(d) In the event the leased Equipment is damaged, its repair shall be the responsibility and obligation of the Lessee. In every such instance, Lessor agrees to assign to Lessee any and all rights Lessors may have under insurance policies owned or controlled by Lessor with respect to such damage, as well as any rights Lessor may have to be reimbursed for such damage pursuant to insurance coverage carried by others, provided that the Lessee shall not then be in default of any of the terms and conditions of the lease on its part to be performed.

(e) In the event the leased Equipment is destroyed, stolen, or damaged to such extent that Lessee finds it undesirable to continue its use, all of the Lessor's right, title and interest in the Equipment, together with any and all rights it may have with respect to such Equipment under insurance carried by others, shall be assigned to Lessee or its designee upon payment by Lessee of the remaining unpaid rental payments as to such Equipment up to the

end of the contract term (proportionately adjusted to reflect the deduction in Lessor's financial or carrying costs).

5. Lessee agrees that Lessor may assign all right, title and interest of Lessor in and to such lease agreements, all monies due and to become due thereon, and the Equipment leased hereby, and Lessee agrees, if requested by such assignee, to pay direct to such assignee all monies due and to become due by it on such lease agreements. Lessee may, upon written consent of Lessor, assign its interest in this agreement as to the Equipment described in Schedule "A". All benefits, rights and liabilities then existing shall flow to and be assumed by the assignee, but without relieving the assignor of any liability hereunder.

6. Lessee may use the Equipment leased hereunder at any and all times for any and all legal purposes. Lessor shall not use or suffer or permit any Equipment to be used for any unlawful purpose or for the transportation of any property or material deemed extra hazardous, explosive or inflammable.

7. In case of the Lessee's failure to pay the rentals provided for above, or to fulfill or perform the conditions imposed upon the Lessee by this lease, the Lessor shall give written notice to the Lessee of such default. If the condition is not corrected within fifteen (15) days after date of written notice, the Lessor shall have the right, at its option, to declare all unpaid rentals forthwith to be due and payable and to terminate this agreement and Lessor shall have the right:

(a) To enter any premises where any Equipment may be, with or without the assistance of any person or persons, and to take, retake and remove the same, including all substituted parts and accessories, without being liable to any suit, action, defense, or other proceedings by the Lessee, and to hold, use, sell, lease or otherwise dispose of any of said Equipment or to keep said Equipment idle, severally

or entirely as the Lessor may elect, such election by the Lessor to have no effect upon Lessee's liability under this agreement, or Lessor's rights hereunder and, upon such possession or repossession, all Lessee's rights herein and thereto, shall cease and determine.

(b) If the Lessee, or its agents, shall fail or refuse to deliver, or shall convert or destroy any of the lease property, the Lessor shall have the right, as an alternative in place of subdivision (a) hereof, and in addition to such other remedies as are available to it hereunder, to hold the Lessee and its said agents liable for the value of the said withheld or destroyed property.

(c) If any action shall be brought by either party to this lease for the interpretation thereof, for the recovery of damages resulting from the breach of any term thereof, the prevailing party to such action shall be entitled to reasonable attorney's fees incurred thereby, and said fees shall be included in the judgment awarded in such action to the prevailing party. Lessee does hereby further covenant and agree that all rights and remedies hereunder are cumulative and not exclusive and that a waiver by Lessor of any breach by Lessee of the terms, covenants and conditions hereof, shall not constitute a waiver of future breaches or defaults.

8. If before the commencement of the term of this agreement, or at any time during the term, Lessee shall make an assignment for the benefit of creditors, or shall become insolvent, or if a receiver or trustee of Lessee's property shall be appointed, or if the Lessee (where it is a corporation) shall terminate its existence or take any steps to terminate its existence, or if a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of effecting an arrangement or composition with Lessee's creditors, then and in each and every such case, this agreement shall terminate forthwith, without any further act or

notice by the Lessor, and the Lessor shall immediately have any and all of the rights forth herein including, but not limited to, paragraphs designated "7" and "12" hereof.

9. The Equipment shall be based at the home port of Lessee, as of contract date, and shall not be moved to a new permanent location without the written consent of the Lessor. Lessee may sublet Equipment to a third party only with the written approval of the Lessor.

10. All said Equipment shall remain personal property of the Lessor and the title thereto shall remain in the Lessor exclusively. Lessee shall keep the Equipment free from any and all liens and encumbrances. Upon termination of the Lease the Equipment shall be returned to Lessor, at Lessee's sole expense, and in the same condition as when received by Lessee, less reasonable wear and tear resulting from proper use thereof. All replacement parts, additions and accessories incorporated in or affixed to the Equipment after the commencement of the Lease shall become the property of the Lessor.

11. Lessor agrees together with Lessee that Lessor is the lawful owner of said Equipment free from all encumbrances, and that, conditioned upon Lessee's performing the provisions hereof, Lessee shall use and maintain the Equipment in a rightful manner during said term without interference. The Lessor or any assignee of Lessor is authorized to file any Financial Statements without the signature of the Lessee.

12. Upon termination of this agreement, as provided by paragraphs numbered "7" and "8", or otherwise, the Lessor, in addition to any or different rights in this agreement provided, shall be entitled to all gains and/or profits prevented and damages sustained, liquidated herein for all purposes including claims and suits against the Lessee's assets in bankruptcy, reorganization or arrangement proceedings, or pursuant to other provisions of the United

States Bankruptcy Act, or in any assignment for the benefit of creditors proceedings as follows:

(a) All sums due and unpaid at the time agreement is terminated.

(b) The total of all sums which would have become due under the normal operation of this agreement from the date of such termination to the date it would have normally expired had it not been earlier terminated.

In determining said liquidated damages, the parties have made due allowances for the Lessor's investment in buying and/or reconditioning the leased Equipment, the uncertainty of leasing them to others, cost to Lessor for the period during which they may remain idle, or if sold, the uncertainty of the sales price and the Lessor's loss in selling said Equipment, commissions and legal expense to be paid, etc.

13. Nothing contained in this agreement shall affect the Lessor's right to receive payment from a Trustee, Receiver, Debtor or other representative of the Lessee, in bankruptcy, reorganization or arrangement proceedings, or otherwise, or from an Assignee for the Benefit of Creditors, for the use of the Equipment subsequent to the termination of this agreement; provided, however, that the payment received therefrom shall be offset against the liquidated damages provided for in paragraph "12" above.

14. This agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

15. All notices to be given to Lessor shall be given by depositing the same in the United States mail, registered or certified, postage prepaid and addressed to Lessor as follows: Pearson Yacht Leasing Company, 600 Old Country Road, Garden City, N.Y. 11530.

All notices to be given to Lessee shall be given by depositing the same in the United States mail, registered or

certified, postage prepaid and addressed to Lessee as follows:

Mr. & Mrs. Donovan Olson, Blvd. Monroig AX 36, Levittown Catano, Puerto Rico.

16. The Lessor is authorized to file any required financing statement without the signature of the debtor.

17. This agreement, with Schedule "A" and Schedule "B" affixed hereto and made part hereof, constitute the entire agreement and understanding of the Lessor and Lessee, and shall not be amended or altered in any way unless such amendment or alteration be endorsed hereon in writing and signed by the executive officers of both parties or, if the Lessee is not a Corporation, by the Lessee in person.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed, in triplicate, as of the day and year first above written.

LESSOR: PEARSON YACHT LEASING COMPANY

By ROBERT F. LOAR, Director
Robert F. Loar

LESSEE: DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson

LORETTA OLSON

[17]

SCHEDULE "A"

This Schedule "A" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Description

1—Pearson 300, Hull No. 127 with the following equipment: Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H & C Water Pressure System; Shower; Edson Wheel w compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 Add'l Opening Points; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorade Ventilators, and Mainsail; Jib and Sail Cover.

LESSOR: PEARSON YACHT LEASING COMPANY

By /s/ ROBERT F. LOAR

Robert F. Loar

Director

LESSEE DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON

Donovan Olson

Title

/s/ LORETTA OLSON

Loretta Olson

Executed in Triplicate this
15th day of March, 1971

[18]

SCHEDULE "B"

This Schedule "B" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

RENTAL CHARGES

<i>Price Basis</i>	<i>Per Unit Monthly</i>
Based on Unit Price of \$23,983.00	\$474.66*
Less: Down Payment 2,887.00	
Amount Financed	\$21,096.00

* *NOTE:* Late payment of rentals are charged 1½% monthly on delinquent amounts.

Annual Percentage Rate: 12.50%

LESSOR: PEARSON YACHT LEASING COMPANY

By /s/ ROBERT F. LOAR
Robert F. Loar

Director

LESSEE DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson Title
/s/ LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

[19]

ADDENDUM No. 1

This Addendum No. 1 is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Lessee is hereby given the right and privilege, at its option, to purchase vehicles described in Schedule "A" of this lease, at the respective option prices for the periods of time indicated below, provided that all rents theretofore due and payable have paid in full.

Percentage Depreciation—Option Period

<i>Option Period</i>	<i>Option Price Per Unit</i>
End of 1st year	\$18,092.24
" " 2nd year	14,456.72
" " 3rd year	10,239.44
" " 4th year	5,440.40
" " 5th year	1.00

The option to purchase shall be exercisable by Lessee by giving Lessor not less than thirty (30) days notice in writing prior to the expiration of the 60 months term. Lessor covenants and agrees that upon exercise of the option Lessor shall duly execute and deliver to the Lessee all documents necessary and proper to effect transfer of ownership of said vehicles to Lessee, free and clear of all encumbrances and liens (other than encumbrances or liens suffered or permitted by Lessee to become effective thereon) upon payment by the Lessee in cash or certified check of the full balance of said option price and thereupon this lease shall terminate and no further rents shall become

due thereunder with reference to the vehicles leased by the Lessee.

LESSOR: PEARSON YACHT LEASING COMPANY

By /s/ ROBERT F. LOAR
Robert F. Loar

Director

LESSEE: DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson Title

/s/ LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

[20] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

**Motion For A Preliminary Injunction and Order To Show
Cause To Convene a Three Judge Court**

TO: THE HONORABLE COURT:

The Plaintiff, by its undersigned attorneys, does respectfully move this Court for a preliminary injunction and to issue an order to show cause addressed to the defendants, why a preliminary injunction should not issue until the constitutionality of their acts can be determined by a three judge court, convened in accordance with the provisions of 28 U.S.C. § 2284, and as grounds for this motion does respectfully show:

1. The plaintiff on this date filed a verified complaint setting forth the grounds on which plaintiff contends that it is being deprived of its rights, privi-

leges and immunities under the Constitution of the United States of America.

2. The deprivation of those rights, privileges and immunities by defendant under color of law, will continue indefinitely unless restrained and enjoined by order of this Honorable Court.
- [21] 3. Since a three judge court, as required by the provisions of 28 U.S.C. § 2284, cannot, for practical reasons, be convened forthwith; irreparable injury, loss and damage to plaintiff, as more particularly appears in the verified complaint together with this motion, before a decision on the legality and constitutionality of the forfeiture may be rendered.
4. The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to defendants but will prevent irreparable injury to the plaintiff.

WHEREFORE, it is respectfully prayed that this Honorable Court issue an order to show cause addressed to defendants, Luis Torres Massa, Superintendent of Police of the Commonwealth of Puerto Rico and Manuel Martínez Suárez, Chief of the Office of Transportation of the Commonwealth of Puerto Rico, requiring them to show cause why they should not be restrained and enjoined in the manner prayed for in the complaint.

San Juan, Puerto Rico, this, 6th day of November, 1972.

NACHMAN, FELDSTEIN,
GELPI & ANTONETTI
Attorneys for Plaintiff
P. O. Box 2407
San Juan, Puerto Rico 00903

/s/ GUSTAVO A. GELPÍ
Gustavo A. Gelpí

[22] IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Motion To Convene a Three Judge Court

TO: THE HONORABLE COURT:

The Plaintiff, by its undersigned attorneys does respectfully move this Court to convene, for the purposes of hearing and determining this cause, a statutory court of three judges, at least one of whom shall be a circuit judge, in accordance with the provisions of § 2284, Title 28, United States Code.

San Juan, Puerto Rico, this 6th day of November, 1972.

NACHMAN, FELDSTEIN,
GELPI & ANTONETTI
Attorneys for Plaintiff
P. O. Box 2407
San Juan, Puerto Rico 00903

/s/ GUSTAVO A. GELPI
Gustavo A. Gelpí

[33] IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Motion in Opposition to Convening of a Three Judge Court

TO THE HONORABLE COURT:

Now come defendants in the above captioned case and through the undersigned attorneys respectfully oppose the

convening of a three judge court in the present matter for the reasons set forth in the accompanying Memorandum.

Respectfully submitted.

San Juan, Puerto Rico, November 30, 1972.

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTALVO
Assistant Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

By: /s/ **WILLIAM A. POWER**
William A. Power
Attorney, Department of Justice

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

[35] **Minutes of Proceedings**

Date Dec. 13, 1972, Judge Toledo (In Chambers), Reporter
Waived Civil 1018-72

Pearson Yacht Leasing Company, etc. Plaintiff—For plaintiff Gustavo Gelpi vs. Luis Torres Massa, as Superintendent of Police of the Commonwealth of P.R., et al, Defendant—For defendant William Powers

Case called for hearing in Chambers on the application and motion to convene a three judge court and on opposition of defendant. Statement of counsel for plaintiff heard. Statement of attorney for plaintiff heard as to whether this Court should abstain from ruling on the Constitutional question which is challenged. He requests a three judge court be convened, and states he will go to the Local Court only as to the Commonwealth Law, but will come to the Federal Court as to the Federal question. Statement of attorney for the Department of Justice of Commonwealth of P.R. heard. Attorney for plaintiff states

he will not submit to the local Court the Federal question. Court states he will consider the stipulation filed on this date together with the rest of the file and will render an opinion. He further states that if he decides to call a three judge court the Court is entitled to enter a restraining order in which case the plaintiff will have to set a bond. Attorney for plaintiff states they are ready to set up bond. Attorney for defendants oppose the convening of a three judge court. Court states counsel for both parties shall have ten days from today to file simultaneous memorandum. Counsel to let the Court know if they are not going to file memos.

[36] **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

Civil No. 1018-72

[Caption Omitted]

Stipulations

To: THE HONORABLE COURT:

COME Now the parties through their undersigned attorneys and for the purpose of simplifying factual questions and to avoid the necessity of an evidentiary hearing, do hereby enter into the following stipulations:

1. Plaintiff is a New York corporation engaged in the chartering and/or leasing of vessels in the United States of America, including the chartering and leasing of vessels for use in the navigable waters of the Commonwealth of Puerto Rico.

2. The defendant, Luis Torres Massa, is the Superintendent of the Police of the Commonwealth of Puerto Rico and as such is directly in charge of enforcing the criminal laws of the Commonwealth of Puerto Rico, including the provisions of Title 24, §§ 2101, The Controlled Substances Act of Puerto Rico, June 23, 1971 (24 L.P.R.A. §§ 2101-2607).

3. The defendant, Manuel Martínez Suárez, is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

4. That pursuant to § 2512(a), (4) and (b), the defendant, Luis Torres Massa, was empowered to confiscate [37] and subject to forfeiture to the Commonwealth of Puerto Rico "all conveyances, including aircraft, vehicles, and mount or vessels which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the Act."

5. Defendant, Luis Torres Massa, is further empowered to seize any property subject to forfeiture under the provisions of 24 L.P.R.A. § 2512(a)(4) by process issued pursuant to Act of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, §§ 1721 and 1722 of Title 34.

6. Pursuant to the powers conferred by 24 L.P.R.A. §§ 2512(a)(4) and (b), defendant, Luis Torres Massa, through his delegates, policemen and/or other agents, on July 11th, 1972 seized the following property:

1—Pearson 300, Hull No. 127 with the following equipment:

Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H&C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 additional Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsail; Jib and Sail Covers.

7. At the time of the seizure of the aforesaid property by the defendant, Luis Torres Massa, the same was in the

possession of Donovan Olson and Loretta Olson pursuant to a bareboat charter with plaintiff, copy of which is annexed hereto "Exhibit A".

[38] 8. Pursuant to the provisions of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722 (a), the defendant, Luis Torres Massa, through his officers, agents and/or employees served notice of the seizure upon the lessee of the aforesaid property by mailing to him copy thereof at his known address. The notice of seizure was sent to Donovan Olson, who registered with the Ports Authority of the Commonwealth of Puerto Rico and was given a number to operate the vessel in question, as required by the provisions of Title 23 §§ 451 sub-paragraphs (a), (b) and (c).

9. That at the time of the seizure and at the time of service of notice of seizure, the lawful owner of the seized property was Pearson Yacht Leasing Company, a Division of Grumman Allied Industries, Inc.

10. That the plaintiff herein has never been notified of the seizure. The plaintiff has never registered or requested a number at the Division of Marine Operations of the Maritime Department of the Ports Authority in the manner and form provided by § 451, sub-paragraphs (a), (b) and (c) of Title 23.

11. The property seized is being detained, upon information and belief, at a Police Marine, in Boqueron, Puerto Rico, under the physical custody and control of agents, policemen and/or employees of defendant Luis Torres Massa.

12. Pursuant to the provisions of 34 L.P.R.A. § 1722 (b) the property seized by defendant Luis Torres Massa, has been placed under the legal custody of defendant Manuel Martínez Suárez, who is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

13. Upon information and belief, defendant, Manuel Martínez Suárez, pursuant to the powers conferred upon him by Statute 34 L.P.R.A. § 1722(b) has appraised the

property in question in the sum of \$19,800.00 and intends to hold the same as legal owner thereof.

[39] 14. The defendants, Luis Torres Massa, and Manuel Martínez Suárez, have proceeded under the authority conferred by Act 4 of June 23, 1971 (24 L.P.R.A. § 2512(a), (4)(b) and Act No. 39 of June 4, 1960, (34 L.P.R.A. § 1722).

15. The plaintiff had no knowledge that its property was being used in connection with or in violation of the Controlled Substance Act of the Commonwealth of Puerto Rico. Defendants concede that plaintiff corporation, its agents, employees and/or representatives were in no way whatsoever involved in the criminal enterprise carried on by lessee, Donovan Olson. (Lessee was accused of using the plaintiff's property on May 6, 1972 to convey, transport, carry and transfer a narcotic drug known as "marijuana", within the ward of La Parguera, in violation of law).

The foregoing facts and issues are stipulated by and between the parties, this 12th day of December, 1972, at San Juan, Puerto Rico.

NACHMAN, FELDSTEIN
GELPI & ANTONETTI
Attorneys for Plaintiff

By: /s/ GUSTAVO GELPÍ
Gustavo Gelpí

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTALVO
Assistant Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

WILLIAM A. POWER
Attorney, Department of Justice
Attorneys for Defendants

By: /s/ WILLIAM A. POWER
William A. Power

[40]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

**Motion Submitting to the Convening of a Three Judge Court
To The Honorable Court:**

Now come defendants in the above captioned case and respectfully allege and pray as follows:

That after a thorough study of the point of law in question defendants respectfully submit to the convening of a three judge court in the present case.

Respectfully submitted.

San Juan, Puerto Rico, December 21, 1972.

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTAVO
Assistant Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

LUIS BERRIOS AMADEO
Attorney, Department of Justice

By: /s/ WILLIAM A. POWER
William A. Power
Attorney, Department of Justice

[42]

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Pursuant to the authority and command of 28 U.S.C. § 2284, I hereby designate and assign the Honorable Frank M. Coffin, United States Court of Appeals for the First Circuit, and the Honorable Jose V. Toledo, United States District Judge for the District of Puerto Rico to sit with the Honorable Hiram R. Cancio, United States District Judge for the District of Puerto Rico in the above-entitled cause, a three-judge district court being required by 28 U.S.C. § 2281.

/s/ **FRANK M. COFFIN**
Frank M. Coffin, Chief Judge,
First Circuit

Dated: January 18, 1973

[43]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Answer to Complaint

To THE HONORABLE COURT:

Now come defendants in the above case and through the undersigned attorneys, respectfully allege and pray as follows:

1. Allegation number one does not merit a responsive answer.
2. Allegations number 2, 3, 6, 7, 8, 9, 11, 14 and 15 are admitted.

3. Allegation number 13 is denied for lack of information.
4. Allegations number 17, 18, 19 and 20 are denied.
5. Allegation number 4 is admitted but it must be clarified that at the present moment Luis Torres Massa is not the Superintendent of the Police of the Commonwealth of Puerto Rico.
6. Allegation number 5 is admitted but it must be clarified that at the present moment Manuel Martínez Suárez is not the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.
7. Allegation number 10 is admitted but it must be clarified however, that the notice of the seizure was sent to Donovan Olson, the lessee of the property, who registered with the Ports Authority of the Commonwealth of Puerto Rico and was given a number to operate the vessel in question, as required by the provisions of Title 23 section 451, sub-paragraphs (a), (b) and (c).
8. Allegation number 12 is admitted, however, it must be clarified that the plaintiff herein has never registered or requested a number at the Division of Marine Operations of the Maritime Department of the Ports Authority in the [44] manner and form provided by section 451, sub-paragraphs (a), (b) and (c) of Title 23.
9. Allegation number 16 is admitted but it must be clarified that the property in question has been appraised in the sum of \$19,800.00.

Affirmative Defenses

1. The complaint fails to state a cause of action in favor of plaintiff and against co-defendants.
2. The contested statutes are constitutional since they meet the standards set forth in the due process and the "Taking" clauses of the Fifth and Fourteenth amendments of the U. S. Constitution.

3. The requirements of due process were complied with in this case as the notice of seizure was duly sent to the person registered as owner of the property at the Division of Marine Operations of the Maritime Department of the Commonwealth of Puerto Rico.

4. The contested statutes provide for a strict mechanism consonant with the need required to control the evergrowing influx and trafficking of harmful drugs in the Commonwealth of Puerto Rico.

5. Assuming that plaintiff in this case suffered damages, which we deny, these were caused by the negligence of said plaintiff and/or the negligence of Donovan Olson, lessee of the mentioned property.

San Juan, Puerto Rico, January 24, 1973.

RAFAEL SANTOS DEL VALLE
Acting Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

LUIS BERRIOS AMADEO
Attorney, Department of Justice

By: /s/ **WILLIAM A. POWER**
William A. Power
Attorney, Department of Justice

[51] **IN THE UNITED STATES DISTRICT COURT**
 FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Memorandum Opinion and Order

Plaintiff instituted this suit seeking permanent injunctive relief alleging that the seizure and forfeiture of its property by the Superintendent of Police of the Common-

wealth of Puerto Rico (hereinafter referred to as the Superintendent), violated the Due Process Clause, and constituted a taking of property without just compensation, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States. As the action sought to enjoin the enforcement of a state statute on the grounds of its inconsistency with the Constitution of the United States, a three-judge court was convened.¹ Although the [52] jurisdiction of this Court is not in issue, we do nevertheless find that all prerequisites, both jurisdictional and pseudojurisdictional,² are present and, therefore, conclude that this case is properly before us.

1.—The Constitutional claim presented is substantial. *Monroe v. Pape*, 365 U.S. 167 (1961); *McNeese v. Board of Education for Community School District No. 187*, 373 U.S. 668 (1963); *Lynch v. Household Finance Corporation*, 405 U.S. 538 (1972).

2.—The challenged statutes have statewide applicability. *Board of Regents of the University of Texas System v. New Left Education Project*, 404 U.S. 541 (1972).

3.—The so called pseudojurisdictional defenses, such as exhaustion, abstention and comity, do not apply to this case. Exhaustion of state judicial remedies is not a prerequisite to invoking federal jurisdiction seeking constitutional protection, *Marin v. University of Puerto Rico*, 346 F. Supp. 470 (D.P.R. 1972). Insofar as abstention is concerned, we

¹ At first, the defendants, represented by the Secretary of Justice of the Commonwealth of Puerto Rico, opposed plaintiff's motion to convene a three-judge court, alleging as sole defense that this was a case calling for the application of the doctrine of abstention. After oral argument on the motion, the Secretary withdrew this defense and filed a motion consenting to the convening of a three-judge court. The District Judge, having found that all jurisdictional pre-requisites had been met, then requested the three-judge court.

² This term is borrowed from *Hobbs v. Thompson*, 448 F.2d 456 (5 Cir. 1971).

specifically find that the statutes here involved, as well as their predecessors, have been consistently interpreted by the Supreme Court of the Commonwealth of Puerto Rico⁸ and, consequently, under the cases of *Wisconsin v. Constantineau*, 400 U.S. 433 (1970); *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970); *Reetz v. Bozanich*, 397 U.S. 82 (1970); *Harman v. Forsseneius*, 380 U.S. 528 (1964), and *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), we need not abstain. We do, nonetheless, believe that the Supreme Court of the Commonwealth of Puerto Rico would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes.

There is "no conceivable way in which the Commonwealth Courts can construe" the challenged statutes "to avoid the constitutional issues raised in this case." *Roldano Santin Arias v. Examining Board of Refrigeration and Air Conditioning Technicians*, — F. Supp. — (D.P.R. 1972), Opinion entered November 20, 1972). In rejecting abstention, we have also taken into account the ensuing delay and the prejudice and additional losses that plaintiff would have to bear. Plaintiff has been deprived, since July 11, 1972, of valuable property and of the income produced by it. Also, the nature of the property itself, a yacht, makes it specially susceptible to deterioration and other perils of the sea. But, most compelling, is the fact that under the statutory scheme, the available procedure [54] precludes plaintiff from challenging the forfeiture in

⁸ *General Motors Acceptance Corporation v. Brañuela*, 61 D.P.R. 725, 61 P.R.R. 701 (1943); *Torres v. Buscaglia*, 68 D.P.R. 336, 68 P.R.R. 314 (1948); *Martinez v. Buscaglia*, 69 D.P.R. 438, 69 P.R.R. 406 (1948); *General Motors Acceptance Corporation v. District Court*, 70 D.P.R. 941, 70 P.R.R. 898 (1950); *Metro Taxicabs, Inc. v. Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952); *Stuckert Motor Company, Inc. v. District Court*, 74 D.P.R. 527, 74 P.R.R. 494 (1953); *Melendez v. Superior Court*, 90 D.P.R. 656, 677-678, 90 P.R.R. 639, 659-660; *Commonwealth v. Superior Court*, 94 D.P.R. 717, 94 P.R.R. 687 (1967).

the state courts.⁴ Finally, injunctive relief cannot be granted by the Courts of the Commonwealth of Puerto Rico because of the existence in Puerto Rico of an anti-injunction statute.⁵ Having thus considered these threshold issues, we face the issue on the merits.

Our task has been greatly simplified by the cooperation of the parties in stipulating the facts relevant to the constitutional issues raised. These can be summarized as follows: Plaintiff is in the business of leasing pleasure yachts in the United States and Puerto Rico. On July 11, 1972, one of its yachts was seized by the Superintendent and forfeited to the Commonwealth of Puerto Rico. At the time of seizure, the yacht in question was in the possession of a third party pursuant to a lease agreement, which among other things specifically prohibited lessee from using the leased property for an unlawful purpose. The lessee had been discovered by police agents possessing marijuana while on board the yacht which, under Puerto Rican law is [55] prohibited.⁶ Plaintiff did not know that its property was being used for an illegal purpose and was completely innocent of the lessee's criminal act. After the seizure and within the time allowed by law,⁷ the Superintendent notified lessee. Plaintiff was never notified and, since lessee

⁴ Title 34, Laws of Puerto Rico Annotated, Section 1722(a) provides: "The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for availing of the action herein authorized." During oral argument, the Government agreed that under the circumstances of this case, the plaintiff was time barred.

⁵ Title 32, Laws of Puerto Rico Annotated, Section 3524; *Arraras v. Tribunal Superior*, — D.P.R. —, — P.R.R. —, (Decision entered January 27, 1972).

⁶ Controlled Substances Act of Puerto Rico, Title 24, Laws of Puerto Rico Annotated, Sections 2101-2607. This law is similar to the Federal Act, Title 21, United States Code, Section 801, et seq.

⁷ Title 34, Laws of Puerto Rico Annotated, Section 1722(a).

did not post bond,⁸ the yacht was forfeited to the Commonwealth of Puerto Rico. It was not until plaintiff attempted to recover possession of the yacht after lessee had defaulted in the rental payments that plaintiff learned of its forfeiture.

Plaintiff then instituted this suit seeking permanent injunctive relief alleging that the statutes under which the defendants had seized the vessel violated the Due Process Clause and, also, that its property had been taken for public use without just compensation.⁹ We agree with the plaintiff.

The statutes involved are Title 24, Laws of Puerto Rico Annotated, Section 2512, which is part of the Controlled Substances Act,¹⁰ and Title 34, Laws of Puerto Rico An-[56]notated. Section 1722, better known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act.¹¹ Under Paragraph (a)(4) of the Controlled Substances Act, it is provided that forfeiture shall be had of:

“(4) all conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [a controlled substance] described in clauses (1) and (2) of this subsection.”

Since marihuana is a controlled substance under the Act, it is included in clause (1) of Section 2512, Subsection (a). Thus, possession of marihuana while on board a vessel makes the vessel subject to forfeiture. Subsection (a)(4),

⁸ Title 34, Laws of Puerto Rico Annotated, Section 1722(c).

⁹ The yacht was not sold at public auction in the manner provided by Title 34, Laws of Puerto Rico Annotated, Section 1722(c). Nevertheless, the Government has set it aside for official use.

¹⁰ Note 7, *supra*.

¹¹ Title 34, Laws of Puerto Rico Annotated, Section 1721.

like its predecessor, Title 24, Laws of Puerto Rico Annotated, Section 975(f), makes no distinction between conveyances owned by the person accused of the illegal act and conveyances owned by a person who is innocent of the possessor's criminal act and is in no way whatsoever connected with it.¹²

[57] In its brief and oral argument, the Commonwealth of Puerto Rico conceded that the owner's innocence is irrelevant to forfeiture proceedings under Section 2512(a)(4), and other Commonwealth of Puerto Rico forfeiture statutes, solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico.¹³ We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given to federal forfeiture statutes by the Supreme Court of the United States. See *Goldsmith Jr. Grant Co. v. United States*, 254 U.S. 505 (1921); *United States v. One Ford Coupe*, 272 U.S. 321 (1926); *Dobbin's Distillery v. United States*, 96 U.S. 395, 399-401 (1878); *The Palmyra*, 12 Wheat. 1, 14, 6 L. Ed. 531 (1827), which cases have since been overruled. Inasmuch

¹² Title 24, L.P.R.A., Section 2512(a), save for some unimportant differences, is an exact copy of its federal counterpart, 21 U.S.C., Section 881(a). The federal act, however, provides that under certain circumstances, property may not be forfeited. Subparagraph (A) excepts from forfeiture property used as a common carrier unless the owner or person in charge was a consenting party or privy to a violation of this chapter. Subparagraph (B) excepts from forfeiture conveyances which are unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state. Although excluded from 24 L.P.R.A., Section 2512(a)(4), these exceptions have been judicially recognized by the Supreme Court of Puerto Rico in the cases of *Metro Taxicabs, Inc. v. Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952), and *Ochoteco v. Superior Court*, 88 D.P.R. 517, 88 P.R.R. 500 (1963).

¹³ See cases cited in Note 3, *supra*.

as Puerto Rican forfeitures statutes were, in most instances, copied from their federal counterparts, as a matter of judicial construction it was logically expected that they would have been interpreted by the Supreme Court of the Commonwealth of Puerto Rico in like manner.

[58] The recent decision of *United States v. United States Coin and Currency*, 401 U.S. 715 (1971), ended the fiction that inanimate objects themselves can be guilty of wrongdoing and it condemned, in the words of Blackstone, the seizure of the property of the innocent "as based upon a 'superstition' inherited from the 'blind days' of feudalism."¹⁴ Justice Harlan, writing for the majority in that case, stated:

"We would first have to be satisfied that a forfeiture statute, with such a broad sweep, did not raise serious constitutional questions under that portion of the Fifth Amendment which commands that no person shall be 'deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation.'"¹⁵

Even before the advent of Coin and Currency, the Court of Appeals for the Sixth Circuit, in the case of *McKeehan v. United States*, 438 F. 2d 739 (1971), rejected the legal fiction that inanimate objects can be guilty of wrongdoing and went on to say that under the Fifth Amendment "the imposition of forfeiture on the appellant is penal and causes an unconstitutional deprivation of personal property "without just compensation."¹⁶ Justice Belaval of the [59] Supreme Court of the Commonwealth of Puerto Rico

¹⁴ *United States v. United States Coin and Currency*, 401 U.S. 715, at 721-723, citing from 1 W. Blackstone, *Commentaries*, C. 8,300.

¹⁵ *Id.* 401 U.S., at 720.

¹⁶ *Id.* 438 F.2d at 745.

had so held in writing the dissenting opinion in *Commonwealth v. Superior Court*, 94 D.P.R. 717, 725-807, 94 P.R.R. 687, 695-773 (1967). In 1972, a California District Court, in the case of *United States v. One 1971 Ford Truck*, 346 F. Supp. 613, followed *Coin and Currency* in setting aside the forfeiture of a vehicle used in connection with an illegal transaction, but whose owner was innocent of the criminal act. A similar result was reached in *Suhomlin v. United States*, 345 F. Supp. 650, 655 (D. Maryland 1972).

It is clear that the forfeiture of plaintiff's property under Title 24, Laws of Puerto Rico Annotated, Section 2512(a)(4), and Title 34, Laws of Puerto Rico Annotated, Section 1722, is unconstitutional in that property of a totally innocent person has been taken for government use without just compensation. To this extent, we hold that the forfeiture of plaintiff's yacht is confiscatory and deprives plaintiff of property without just compensation.

Plaintiff also alleges that the procedure under which property is forfeited violates the Due Process Clause. It claims that Title 34, L.P.R.A., Section 1722, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act,¹⁷ does not meet the due process requirements in allowing the seizure of property without a hearing and before [60] judgment, in failing to require the giving of adequate notice, in not providing for an adequate and meaningful hearing, in providing a procedure where the illegal use is presumed and the burden of proving otherwise is on the claimant, and in establishing a procedure with limited defenses. From the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given. Because of the result we reach here, this issue

¹⁷ 34 L.P.R.A., Section 1722, is made applicable to forfeitures for violations of the Controlled Substances Act of Puerto Rico, by virtue of 24 L.P.R.A., Section 2512(b).

becomes academic. We realize that failure to provide proper notice may violate due process standards. *Menkarell v. Bureau of Narcotics*, 463 F.2d 88, 94 (3 Cir. 1972); *Jackel v. United States*, 304 F. Supp. 993, 999 (S.D.N.Y. 1969).

We do, however, agree with plaintiff that the prehearing, prejudgment provision of this statute does not meet due process requirements. Section 1722(a) provides:

“... The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers.”

There is no provision whereby the seizure can be contested before it is made. In this limited posture, the statute on its face is unconstitutional. Recent Supreme Court decisions have made it clear that, absent some justification reflecting an important governmental or general public interest, property or property rights may not be [61] seized without first giving the affected party adequate and meaningful hearing. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

The decision to seize property rests solely, as in this case, with the Police Superintendent, and it is only after the seizure has taken place that the owner or person in charge thereof may file a compliant and have his day in court.

We rely not only on the *Fuentes v. Shevin* decision, but on a number of other Supreme Court and three-judge district court cases which have struck down state statutes permitting prehearing or prejudgment seizures and deprivations of property or property rights. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969); *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972); *Bell v. Burson*, 402 U.S. 535 (1971); *Wisconsin v. Constantineau*,

400 U.S. 433, 437 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Schneider v. Margossian*, 349 F. Supp. 741 (D. Mass. 1972); *Dorsey v. Community Stores Corporation*, 346 F. Supp. 103 (E.D. Wisc. 1972); *MacQueen v. Lambert*, 348 F. Supp. 1334 (M.D. Fla. 1972); *Holt v. Brown*, 336 F. Supp. 2 (W. D. Ky. 1971); *Klim v. Jones*, 315 F. Supp. 109 (N.D. Cal. 1970). In this case, the only argument advanced in defense of the prehearing seizure is the "need" for efficient control of narcotics. However, we have not been shown in what way prehearing confiscations are going to aid or make more efficient the enforcement of criminal [62] laws. It must be pointed out that in this case the seizure of the yacht took place on July 11, 1972, while the act for which it was forfeited took place on May 6, 1972. Under such circumstances, there is no justification for not including in the statute a provision that would require a hearing prior to seizure. As stated in *Fuentes v. Shevin*, supra, efficiency and economy do not justify obliterating procedural due process:

"The establishment of prompt efficacious procedures to achieve legitimate stated ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile value of vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones."

Stanley v. Illinois, 405 U.S. 645, 656 (1972).¹⁸

Forfeiture is not one of those "extraordinary situations" justifying postponing a hearing. *Boddie v. Connecticut*,

¹⁸ 405 U.S., at page 90, 91, Footnote 22.

401 U.S. 371, 379 (1971); nor has the Commonwealth of Puerto Rico claimed it to be such. Outright seizures without [63] out opportunity for a prior hearing have been allowed only in a few limited cases. The Court, in *Fuentes v. Shevin*, said.

"* * * Thus, the Court has allowed summary seizures of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure and to protect the public from misbranded drugs and contaminated foods."¹⁹

Finally, the Commonwealth of Puerto Rico has asked this Court that, if we find that plaintiff's constitutional rights have been violated, we declare this forfeiture null and void, but sustain the constitutional validity of the statutes. Were this Court faced with a question of a government official's action in applying the statute, we might be in a position of granting such remedy. But the officials involved herein have acted strictly in accordance with the statutes challenged as they have been construed and, therefore, we cannot escape meeting our judicial burden. The Commonwealth of Puerto Rico in this case was fully aware of the remedy requested and had the option of returning the property confiscated or its appraisal value, thereby taking the matter out of our hands.

For the foregoing reasons, it is hereby declared that Sections 2512(a)(4) of Title 24, and Section 1722(a) of [64] Title 34 of the Laws of Puerto Rico are unconstitutional, and an injunction will issue permanently restraining defendants and their successors from enforcing the foregoing provisions insofar as they deny the owner or person in charge of property an opportunity for a hearing, due

¹⁹ 407, U.S. at page 91, 92, and cases cited in footnotes 24, 25, 26, 27 and 28.

to the lack of notice, before the seizure and forfeiture of its property and insofar as a penalty is imposed upon innocent parties.

At the close of its argument, plaintiff pointed out that at present the return of the seized property might not be an adequate remedy, due to the probable deterioration of the vessel. We need not provide a specific remedy, inasmuch as Section 1722(d) of Title 34 provides adequate relief. Plaintiff did stipulate that the appraisal of the property was fair and reasonable and, therefore, is entitled to be paid the amount of the appraisal, plus interest thereon at the rate of 6% per annum, computed from the date of the seizure.

IT IS SO ORDERED.

San Juan, Puerto Rico, March 28, 1973.

FRANK M. COFFIN

Frank M. Coffin, Chief Judge
U. S. Court of Appeals for the
First Circuit, Presiding

HIRAM R. CANCIO

Hiram R. Cancio, Chief Judge
U. S. District Court for the
District of Puerto Rico

JOSE V. TOLEDO

*Jose V. Toledo, United States
District Judge for the District
of Puerto Rico*

[65] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

[Caption omitted]

Motion for Order Substituting Successor Public Officers

To THE HONORABLE COURT:

This is an action which was instituted by plaintiff against Luis Torres Massa, Superintendent of Police and Manuel Martinez Suarez, Chief of Transportation of the Commonwealth of Puerto Rico, in their official capacities. While the proceedings were pending in this Court and the judgment rendered, Astol Calero-Toledo succeeded to the office of Superintendent of Police and Edgar R. Balzac was named Administrator of the newly created agency General Service Administration which is the equivalent of the office of Chief of Transportation, the latter office having been merged into the General Services Administration, [66] as prescribed by law.

WHEREFORE, it is respectfully requested that pursuant to Rules of Civil Procedure, that the successors be substituted as the defendants in this action and that the Clerk be ordered to make the appropriate change.

San Juan, Puerto Rico, this 3rd day of May, 1973

FRANCIS DE JESUS-CHUCK
Attorney General for the
Commonwealth of Puerto Rico

/s/ J. F. RODRIGUEZ RIVERA
J. F. Rodriguez Rivera
Acting Solicitor General

/s/ RUTH TENTORI DE LEBRON-VELAZQUEZ
Ruth Tentori De Lebron-Velazquez
Assistant Solicitor General
Attorneys for Defendants
P. O. Box 192
San Juan, Puerto Rico 00902

[68]

IN THE UNITED STATES DISTRICT COURT

CIVIL No. 1018-72

[Caption omitted]

Order

The Attorney General and the Acting Solicitor General for the Commonwealth of Puerto Rico have filed a motion notifying the Court that the defendants LUIS TORRES-MASSA and MANUEL MARTINEZ-SUAREZ, Superintendent of Police and Chief of Transportation, have been succeeded in said offices by ASTOL CALERO-TOLEDO, as Superintendent of Police and EDGAR R. BALZAC, as Administrator of the General Services Administration of the Commonwealth of Puerto Rico and requesting that they be substituted as defendants in the present action, instead of the original defendants.

It appearing that said motion is for good cause and the Court having been apprised of the facts related therein, the Clerk is ordered to make the appropriate change and effective immediately ASTOL CALERO-TOLEDO, Superintendent of Police and EDGAR R. BALZAC, Administrator of the [69] General Services Administration of the Commonwealth of Puerto Rico, shall appear as defendants in the present action in any further proceedings which may be instituted thereof.

San Juan, Puerto Rico, this 4th day of May, 1973

HIRAM R. CANCIO

United States District Judge

[70]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

[Caption omitted]

Notice of Appeal to the Supreme Court of the United States
To the Honorable Court:

Notice is hereby given that the defendants above named, hereby appeal to the Supreme Court of the United States from the final order entered in this action on 29 March 1973.

This appeal is taken pursuant to 28 U.S.C. 1253.

San Juan, Puerto Rico, this 7th day of May, 1973.

/s/ FRANCISCO DE JESUS-SCHUCK
Francisco De Jesus-Schuck
Attorney General for the
Commonwealth of Puerto Rico

/s/ J. F. RODRIGUEZ-RIVERA
J. F. Rodriguez-Rivera
Acting Solicitor General

/s/ RUTH TENTORI DE LEBRON-VELASQUEZ
Ruth Tentori De Lebron-Velasquez
Assistant Solicitor General
Attorney for Defendants
P. O. Box 192
San Juan, Puerto Rico 00902

[87] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

[Caption omitted]

Judgment

This cause came to be heard on plaintiff's motion seeking permanent injunction against defendants, and the Court having heard oral argument and considering the stipulation of facts filed by the parties, and it appearing to the Court that the defendants committed, are committing and intend to continue to commit acts in violation of plaintiff's constitutional rights; and it further appearing that unless restrained by order of this Court the plaintiff will continue to be deprived of its property without due process of law and without just compensation, now, after due deliberation having been had thereon and for the reasons set forth in the Memorandum Opinion and Order filed and entered March 29, 1973, it is

ORDERED, ADJUDGED and DECREED, that defendants Astol Calero and Edgar R. Balzac, their officers, agents, representatives, employees and all persons in active concert and participation with them be, and they hereby are, permanently enjoined and restrained from in any manner depriving the plaintiff of its property without due process of law and without just compensation; and it is further

ORDERED, ADJUDGED and DECREED, that defendants Astol Calero and Edgar R. Balzac, their officers, agents, representatives, employees and all persons in active concert and participation with them be, and they hereby are permanently enjoined and restrained from enforcing the provisions of Section 2512(a)(4) of Title 24 and Section 1722 (a) of Title 34 of Laws of Puerto Rico Annotated, insofar as these deny the owner or person in charge of property an opportunity for a hearing due to the lack of notice before

the seizure and forfeiture of its property, and insofar as a penalty is imposed upon an innocent party; and it is further

ORDERED, ADJUDGED and DECREED, that Section 2512(a) (4) of Title 24, and Section 1722(a) of Title 34 of the Laws of Puerto Rico Annotated be, and they hereby are declared unconstitutional.

The present judgment is to be effective twenty (20) days after the date of its issuance in view of the reasons set out in our order of this day.

San Juan, Puerto Rico, June 15, 1973.

/s/ **HIRAM R. CANCIO,**
Hiram R. Cancio, Chief Judge
U.S. District Court for the
District of Puerto Rico

/s/ **FRANK M. COFFIN**
Frank M. Coffin, Chief Judge
U. S. Court of Appeals for the
First Circuit, Presiding

/s/ **JOSE V. TOLEDO**
Jose V. Toledo
U.S. District Court for the
District of Puerto Rico